IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE PAZOS, Plaintiff, v. LYONDELL CHEMICAL COMPANY, ET AL., Defendants.	:	CIVIL ACTION NO. 01-7

M E M O R A N D U M

EDUARDO C. ROBRENO, J. December 20, 2001

Plaintiff, Jose Pazos, filed a complaint against defendants Lyondell Chemical Company ("Lyondell") and ARCO Chemical Company Change of Control Plan (the "Plan") alleging violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 § 1001 et seq., and seeking to recover additional separation benefits under the Plan. Before the court are the parties' cross motions for summary judgment.[1] For the reasons

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1. Summary judgment is appropriate if the moving party can "show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed R. Civ. P. 56(c). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. <u>See</u> <u>Matsushita Elec. Co., Ltd. v. Zenith Radio Corp.</u>, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). The Court must accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. <u>See</u> <u>Big Apple BMW, Inc. v. BMW of N. Amer., Inc.</u>, 974 F.2d 1358, 1363 (3d Cir. 1992).

The moving party bears the initial burden of
(continued...)

that follow, the court will grant the plaintiff's motion for summary judgment (doc. no. 14) and deny the defendants' motion for summary judgment (doc. no. 13).[2]

I. BACKGROUND

The plaintiff was an employee of ARCO Chemical Company ("ARCO") when ARCO was acquired by Lyondell. Prior to the acquisition by Lyondell, ARCO enacted the Plan, which provided qualified employees who were terminated within two years of a change of control in the ownership of ARCO, such as the acquisition of ARCO by Lyondell, with salary separation benefits based on the employee's classification either at the time of the change of control or on the date of termination, whichever would

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1. (...continued)
demonstrating the absence of genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 91 L. Ed. 265, 106 S. Ct. 2548 (1986). Once the movant has done so, however, the non-moving party cannot rest on its pleadings. See Fed. R. Civ. P. 56(e). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

2. The original complaint sought benefits based on two theories: (1) a benefits claim against the employer pursuant to 29 U.S.C. § 1132(a)(1)(B); and (2) a breach of fiduciary duty claim pursuant to § 1132(a)(3). The plaintiff's motion for summary judgment did not pursue the breach of fiduciary duty claim, and in its reply to the defendants' motion on that claim, the plaintiff stated that it would not oppose the defendants' motion with respect to that claim. Accordingly, the defendants are entitled to summary judgment with respect to the fiduciary duty claim.

be more favorable to the employee. The plaintiff was terminated by Lyondell within two years from the change of control. The Plan provided plaintiff with separation benefits of $50,116.50 based on an employee classification of “E”. Plaintiff argues that he is entitled to benefits placing him under employee classification “D”, entitling him to benefits of $157,575.60.

Prior to the change of control in July 1998, the plaintiff worked for ARCO as a Senior Research Advisor. This position was assigned a classification of “E” under ARCO’s employee classification system. Lyondell acquired ARCO on July 23, 1998. In October 1998, Lyondell promoted the plaintiff to Principal Research Advisor which, under the ARCO employee classification system, would have placed him in classification “D”. On January 1, 1999, when Lyondell integrated all of the former ARCO employees into its own “market reference system,” Lyondell changed the plaintiff’s job title to Research Scientist V, although plaintiff’s compensation, duties and responsibilities were not changed. Plaintiff was terminated from Lyondell in March 2000.

The Plan provides that employees terminated within two years of the change of control should receive separation benefits based on their employee classification as of the date of their termination, or, if higher, on the date of the change of control. The Plan states:

> A Participant’s Employee Classification shall be determined as set forth in the official records of the Company, and shall be based on his or her status [as] of the date immediately preceding the Participant’s termination date, or, if it would entitle the Participant to a greater Salary Separation Payment or longer Salary Separation Period, as of the date immediately preceding the date on which the Change of Control occurs.

Comprehensive Stipulation Facts (“Stipulation”) ¶ 21, Defs.’ Mot. Summ. J. Ex. A. The Plan further notes that the Plan is binding upon ARCO and upon its successors and assigns. The Plan states:

> This Plan shall be binding upon the Company, its successors and assigns, and the Company shall require any successor or assign to expressly assume and agree to perform this Plan in the same manner and to the same extent that the Company would be required to perform it if no such succession or assignment had taken place.

Pl. Mot. Summ. J. Ex. 1 § 7.1(a).

II. DISCUSSION

The first step in determining whether a member of an ERISA qualified plan is entitled to benefits is to establish the appropriate standard of review. The Supreme Court has determined that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989). The Plan in this case does not provide any discretionary authority to the administrator to determine plan interpretation or participant qualification. See Stipulation ¶ 27. Thus, de novo review is the appropriate standard in this case. See Luby v. Teamsters Health, Wellfare, and Pension Trust Funds, 944 F.2d 1176, 1180 (3d Cir. 1991).

Breach of contract principles, applied in light of federal common law, provide the substantive rule of decision in interpreting ERISA plans. See Kemmerer v. ICI Americas Inc., 70 F.3d 281, 287 (3d Cir. 1995). The task of constructing a contract begins by reference to the language of the contract itself. Similarly, determining the parties' duties and obligations under an ERISA plan also begins with the words of the plan. See Dewitt v. Penn-Del Directory Corp., 106 F.3d 514, 520 (3d Cir. 1997). Whether the disputed contract language is ambiguous is a question of law for the court. See In re: New Valley Corp., 89 F.3d 143, 150 (3d Cir. 1996). An ambiguity arises when the language at issue is subject to at least two reasonable interpretations. See Bill Gray Enters. v. Gourley, 248 F.3d 206, 218 (3d Cir. 2001). In evaluating whether a contract is ambiguous, a trial court does "not simply determine whether, from [its] point of view, the language is clear." Id. Courts "hear the proffer of the parties and determine if there are objective indicia that, from the linguistic reference point of the parties, the terms of the contract are susceptible to different meanings." Id. (quoting Sheet Metal Workers Int'l

Ass’n, Local 19 v. 2300 Group, Inc., 949 F.2d 1274, 1284 (3d Cir. 1991)). Before making a finding as to whether the contract is ambiguous, courts may “consider the contract language, the meanings suggested by counsel, and the extrinsic evidence offered in support of each interpretation.” Id. The court is not bound by the four corners of a document in making that determination, as a contract may not appear to be ambiguous without an examination of the context in which the contract was made. See Sanford Inv. Co. v. Ahlstrom Mach. Holdings, Inc., 198 F. 3d 415, 421 (3d Cir. 1999).

The Plan provides that the plaintiff was entitled to use, as the employee classification for determining benefits, the more favorable of (1) the employee classification set forth in the company’s official records on the date of his termination from Lyondell or (2) the employee classification set forth in the official records on the date of the change of control. There is no dispute as to the plaintiff’s employee classification of “E” on the date of the change of control. The issue is what was plaintiff’s employee classification on the date of termination.

Plaintiff contends that on the date of termination his employee classification was “D”. Plaintiff argues that the position of Research Scientist V, which he held on the date of termination, was the equivalent of the position of Principal Research Advisor under the ARCO employee classification system.

Under the ARCO employee classification system, the position of Principal Research Advisor was assigned a classification of “D”. On the other hand, defendants contend that on the date of plaintiff’s termination, Lyondell had not adopted ARCO’s employee classification system. Defendants explain that although when Lyondell acquired ARCO in July 1998 it kept the titles and salaries for all former ARCO personnel used by ARCO under ARCO’s employee classification system for a transition period, it did not adopt the ARCO employee classification system itself. Specifically, when the plaintiff was promoted in October 1998, Lyondell claims it used the same job title previously used by ARCO to describe his new position, but did not assign it the classification the position would have had under the ARCO employee classification system.

Defendants acknowledge that the new position to which the plaintiff was promoted by Lyondell would have had a classification “D” under the ARCO employee classification system. Despite using the old title, defendants argue that they never considered the new position to fall within classification “D” because Lyondell did not adopt the ARCO classification system. Therefore, according to defendants, the position held by plaintiff had no classification at all on the date of his termination. Given the alternative of an employee classification of “E”, the pre-promotion classification plaintiff had at ARCO, and no classification after the change of control occurred, the defendants reason that the most favorable classification the plaintiff is entitled to is “E”.

Defendants’ position is contrary to the plain language of the Plan. The Plan itself provides that the employee’s classification upon which the benefits will be calculated will be based on the employee’s “status” either at the time of the change of control or at the termination of employment. Stipulation ¶ 21 (quoting Plan App. A). “Status” generally means the “condition of a person” or, more appropriately in this case, “position or rank in relation to others.” Webster’s New Collegiate Dictionary (1979).[3] At the time of the change of control, plaintiff’s “status”, i.e. position or rank, was that of Senior Research Advisor with an employee classification of “E”. After the change of control, plaintiff was promoted by Lyondell to Principal Research Advisor, as titled under the ARCO employee classification system. Upon being promoted to Principal Research Advisor by Lyondell, plaintiff’s “status” changed, i.e. his “position or rank in relation to others” improved. Later, Lyondell renamed the Principal Research Advisor position Research

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3. The use of dictionaries is an accepted way of finding the common usage of particular words. See Algrant v. Evergreen Valley Nurseries Ltd. P'ship, 126 F.3d 178, 188 (3rd Cir. 1997) (discussing how words should be understood according to their common usage and using a dictionary to determine their common usage).

Scientist V to conform with its own market reference system, but did not change the compensation, duties or responsibilities attached to the plaintiff’s position, i.e. did not change “the position or rank [of plaintiff’s new job] in relation to others.” Plaintiff remained in the new position until he was terminated within two years of the date of the change of control. Thus, at the time of termination, plaintiff’s status, i.e. his position or rank in relation to others, continued to be a “D”, the classification which the new position would have been assigned under the ARCO employee classification system. The court concludes that a mere change of title, without a change in compensation, duties or responsibilities, did not affect the plaintiff’s employee status for the purpose of calculating ERISA benefits.

Defendants’ argument is also contrary to the purpose of the Plan. The Plan provides that the successor to ARCO would be required (for a two year period) to perform under the Plan “in the same manner and to the same extent that [ARCO] would be required to perform.” Plan § 7.1(a). Thus, if ARCO had promoted plaintiff to the position of Principal Research Advisor, as re-titled Research Scientist V under Lyondell’s market reference system, at termination, ARCO would have been obligated to calculate separation payments based upon the job classification of the new position. Clearly, it was intended that under the

Plan any successor would have the same obligations as ARCO. This provision guaranteed Plan members that if they were promoted within two years of the date of the change of control by the successor of ARCO, they would be treated for the purposes of calculating separation benefits as if they had been promoted by ARCO. Defendants' interpretation of the Plan would thwart this purpose in that unless ARCO was purchased by a successor with an employee classification system that mirrored the employee classification system at ARCO, the successor could evade the obligation "to perform in the same manner and to the same extent" as ARCO simply by changing titles of the existing positions, creating a new position, or eliminating the classification altogether, just as Lyondell did here. The court will not construe the Plan in a manner which would render one of its essential provisions basically illusory. See Kemmerer, 70 F.3d at 288.

The court finds that the Plan is unambiguous. The plain language of the Plan, read in light of the purposes to be achieved and upon consideration of the interpretations suggested by counsel, provides only one reasonable interpretation. Thereunder, the plaintiff is entitled to have separation benefits calculated according to his employment classification, which shall be based upon plaintiff's status, or his position at Lyondell, at the time of his termination. The employee classification of the plaintiff's position at the time of his termination from Lyondell shall be determined by the employee classification that the plaintiff's position would have been assigned under the ARCO employee classification system. Thus, pursuant to the Plan, the plaintiff is entitled to receive benefits based upon his status as a Principal Research Advisor, as titled by ARCO, or Research Scientist V, as renamed by Lyondell. Plaintiff's employee classification at the time of his termination was therefore "D" and, accordingly, he was entitled to benefits in the amount of $157,575.60. Since the plaintiff has received separation benefits in the amount of $50,116.50, the plaintiff is entitled to an additional $107,459.10.[4]

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4. The plaintiff also requests prejudgment interest. Although ERISA does not explicitly provide for prejudgment interest, the Third Circuit has recognized that "[i]nterest on delayed ERISA benefits is an equitable remedy left to the discretion of the trial court." See Holmes v. Pension Plan of Bethlehem Steel Corp., 214 F.3d 124, 131 (3d Cir. 2000). Prejudgment interest is to be "awarded when the amount of underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of the money which was legally due." Anthuis v. Colt Industries Operating Corp., 971 F.2d 999, 1010 (3d Cir. 1992) (quoting Stroh Container Co. v. Delphi Industries, Inc., 783 F.2d 743, 750 (8th Cir. 1986)). Nevertheless, even though the Third Circuit has determined that the court has the authority to award prejudgment interest, such a determination does not mean that the party need not prove the appropriate amount of interest. The plaintiff in this case has provided no basis for determining prejudgment interest, other than directing the court to the Internal Revenue Service's adjusted prime rate for overpayments as prescribed in 26 U.S.C. § 6621(a)(1). The plaintiff provides no calculations upon which to base a prejudgment interest award. A party seeking interest has a
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III. CONCLUSION

For the reasons stated above, plaintiff’s motion for summary judgment is granted and defendants’ motion for summary judgment is denied.

An appropriate order follows.

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EDUARDO C. ROBRENO, J.

4. (...continued)
burden of producing calculations upon which the court may base the interest award, so that the defendants have an opportunity to object to the calculations. It is not the job of the court to conduct the plaintiff’s calculations for him.